IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8316 OF 2004

Abdul Rahiman Appalal Mulani
and anr. ... Petitioners

v/s

Smt Hirabai Shivaji Patil
and others ... Respondents

Mr K.S. Patil for Petitioners.

Mr M.V. Limaye for Respondent Nos.1 and 2.

CORAM : D.K. DESHMUKH J.

DATE : 20TH JULY 2005.

P.C. :-

1. By order impugned in the petition, an order passed by the Appeal Court refusing to stay execution of the decree is challenged. The decree which is impugned in the appeal is a decree of perpetual injunction restraining the petitioners from disturbing possession of the plaintiffs over the suit land. Obviously, the decree has been passed on a a finding recorded by the Trial Court that the plaintiffs are in possession of the land. Considering the nature of the decree passed, it could not have been put to execution by the plaintiffs. The question of putting that decree in execution comes in only if possession is taken. In this view of the matter therefore, there was no question of staying execution of the decree without there being any allegation that the plaintiff - decree holder is trying to put decree for execution on the allegation of threat. No such averment is found in the application for stay. Hence I do not find any error in the order impugned.

Petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.